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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/801,139

03/15/2004

Paul Haefner

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EXAMINER

KAHELIN, MICHAEL WILLIAM

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

07/02/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/801,139	Applicant(s) HAEFNER, PAUL	
	Examiner MICHAEL KAHRELIN	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25,30 and 35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25,30 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Decision by Board of Appeals and Interferences

1. In view of the decision by the Board of Patent Appeals and Interferences (hereinafter, "Board") decided on March 27, 2009, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below. THIS ACTION IS NON-FINAL.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) and Technology Center Director have approved of reopening prosecution by signing below:

/DONALD HAJEC/

Director, Technology Center 3700.

2. Claims 1-24, 26-29, 31-34, and 36-48 are cancelled by the Examiner as rejection of these claims was affirmed by the Board's decision of 3/27/2009.

3. Claims 25 and 30 are rejected under the art of record, as elaborated below, because the limitations of these claims are present in the primary reference applied under the affirmed 35 U.S.C. §103(a) rejection of the corresponding independent claim (see item 19 of the Final Office Action of 2/17/2006). These claims were not listed in the affirmed § 103(a) rejection, but this was a clerical error as shown by, e.g., items 16 and 17 of the Final Office Action of 2/17/2006, indicating that the applied primary reference discloses these features.

4. Claim 35 is dependent from claim 32. The rejection of claim 32 under 35 U.S.C. § 102(b) was affirmed by the Board's decision of 3/27/2009. The rejection of claim 35 under 35 U.S.C. §102(b) was overturned, but a new grounds of rejection under 35 U.S.C. § 103(a) in view of new art is applied, as the claimed feature is notorious in the art.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 25 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schaldach (US 4,867,163, hereinafter "Schaldach"). Schaldach discloses an implantable housing (160) comprising a plurality of electrodes (col. 8, lines 1 and 25), detection circuitry (111), a sensor to detect movement of the heart and produce an audio signal (117-120 and col. 7, line 61), a memory (112) to store the signals, a

Art Unit: 3762

controller (113), and communications circuitry to telemeter the electrical and audio signals (125) to an external device (150) such that the user interface (150) provides a visual graphical output representative of the cardiac electrical signal (col. 23, line 20) and an audio output representative of the audio signal. Schaldach further discloses that the external device further comprises a storage media to store the cardiac electrical signal and the audio signal telemetered from the implantable device (153 and/or 159), and that the two signals are time-correlated (col. 23, line 46; and *Ex parte* Haefner, Decision on Appeal, 3/27/2008, pages 14-15). Schaldach does not expressly disclose that the audio signal is presented as an audio output (e.g., through a speaker).

However, it is well known in the art to provide audio signals representative of the audio events of the heart, for example by stethoscope or speaker, so that cardiac maladies can be quickly diagnosed by ear. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an audio output to Schaldach's invention to provide a means to quickly diagnose cardiac maladies by ear.

7. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schaldach in view of Lekholm (US 4,763,646, hereinafter "Lekholm"). Schaldach discloses sensing movement of a heart and producing a sensor signal in response to produce an audio signal (117-120 and col. 7, line 61), detecting cardiac electrical activity and producing a cardiac electrical signal (111), storing the signals in a memory (112), and telemetering the electrical and audio signals (125) to an external device (150). *See also Ex parte* Haefner, Decision on Appeal, 3/27/2008, pages 6-10.

Schaldach does not disclose that the sensor signal comprises an accelerometer signal.

Art Unit: 3762

However, Lekholm teaches that it is known in the art to produce heart movement signals with accelerometers (col. 1, line 34) to provide the predictable result of monitoring various heart maladies based on the mechanical behavior of the heart (col. 2, lines 15-46) with conventional mechanical transducers. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Schaldach's invention by substituting one known mechanical transducer for another known mechanical transducer to provide the predictable results of monitoring various heart maladies based on the mechanical behavior of the heart with conventional devices.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jaeger et al. (US 5,888,187) is one of many teachings of providing audio signals (e.g., via speaker) representative of audio events of the heart.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL KAHRELIN whose telephone number is (571)272-8688. The examiner can normally be reached on M-F, 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3762

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Kahelin/
Examiner, Art Unit 3762

/Angela D Sykes/
Supervisory Patent Examiner, Art Unit 3762